



Houston County Schools

404 West Washington St.

P.O. Drawer 1688

Dothan, AL 36302

(334) 792-8331

Tim Pitchford, Superintendent

November 12, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

CC Docket No. 96-45 and **CC Docket No. 02-6**

Subject: Request for Review/Appeal of the Universal Service Administrative Company (USAC) Decisions

References (USAC Documents/Decision):

1. Funding Year 2009, FCC Form 471 Application Number 650947, FRNs 1786824 and 1786841
 - a. Funding Commitment Decision Letter (FCDL) Denials, dated September 15, 2010 (Attachment 1)
 - b. USAC Schools and Libraries Division Appeal Decision, dated October 28, 2010 (Attachment 2)
2. Funding Year 2010, FCC Form 471 Application Number 722005, FRNs 1957944 and 1957954
 - a. Funding Commitment Decision Letter (FCDL) Denials, dated October 6, 2010 (Attachment 3)

To Whom It May Concern;

Houston County School District (HCSD) respectfully appeals and requests the FCC review the funding denial decisions made by the Universal Service Administrative Company (USAC) for Funding Year 2009 and Funding Year 2010 (see referenced documents, Attachments 1 – 3) related to applications for services provided by Trillion Partners, Inc. We request the FCC assess the basis of USAC's denial decisions, the information provided here, and reverse USAC's denial decisions and fund the Houston County School District's 2009 and 2010 applications cited in this appeal.

Applicant Name: Houston County School District
Billed Entity Number: 128110

Funding Year 2009:
Form 471 Application Number: 650947
Funding Request Numbers: 1786824 and 1786841

Funding Year 2010:

Form 471 Application Number: 722005

Funding Request Numbers: 1957944 and 1957954

Contact Information:

Name: Robert A. (Bob) Blalock

Address: Houston County School District

404 W. Washington St.

Dothan, Alabama 36301

Phone: (334) 792-8331

Fax: (334) 792-1016

Email: bblalock@hcboe.us

Introduction

Houston County School District disagrees with the USAC's denial decisions on our Funding Year 2009 and 2010 applications (Attachments 1 & 3) for Wide Area Network (WAN) and Internet services provided by Trillion Partners, Inc. Houston County School District personnel complied with the State of Alabama's Code for receiving meals which was the only clear guidance available at that time and we did not engage in any activity that prevented a fair and open competitive bidding process. USAC has alleged that HCSD did not conduct a fair and open competitive bid process free from conflicts of interest. However, they failed to demonstrate this in their review. The sole basis of USAC's allegations was that Houston County School District employees accepted meals from the vendor: meals that complied with the gift restrictions outlined in the Code of Alabama (see Attachment 4 & 5), the only clear guidance available at that time. USAC did *not* identify or cite any other inappropriate conversations, exchange of information, inappropriate relationships, or anything else used in their determination that a fair and open competitive bidding process did not occur. In fact, USAC was presumptive in its interpretation of the FCC's gift policy as illustrated by ambiguous guidance that was available to applicants at the time the purported violations occurred. Furthermore, USAC has been unable to cite in any FCC Code, Orders, or other regulations that would cause any reasonable person to conclude that our compliance with the applicable state laws for receiving meals did not apply in this case. We assert that Houston County School District personnel complied with the State of Alabama's Code for receiving meals which was the only legitimate guidance available on the issue at the time of the proposed violations and we did *not* engage in any other activity that prevented a fair and open competitive bid process. Therefore, we request the FCC reverse USAC's denial decisions and fund HCSD's 2009 and 2010 applications for WAN and Internet services.

Background

During USAC's review of Trillion Partners, Inc., in July 2009, Houston County School District provided information to USAC concerning funding year 2004 - 2009 district applications for Trillion services. In our response, we openly acknowledged receiving lunch from a Trillion representative; once in 2008 and once in 2009, the actual dates were unknown. The amount of both of these lunches was estimated at

\$25.00 (for 2 people) and \$35.00 (for 3 people); both within the \$100 per person, \$250 per year, limit restrictions outlined by The Code of Alabama. Additionally, these lunches occurred during a period where Trillion Partners was providing the current contracted WAN and Internet services to HCSD under an existing contract. The visits/meetings and any discussions that occurred were related to the receipt of current services since management and administration of these services was an ongoing activity necessary to ensure the contracted services were being delivered as required (i.e. Was the district experiencing any problems with the network?; Were they receiving appropriate responses when problems did occur?; Were there any other problems such as invoicing, etc. that needed to be addressed?, etc.). At no time did HCSD personnel provide any information to Trillion that was not related to the receipt of current services under the existing contract.

Funding Year 2009 Denial Activity:

Nearly a year later, 6/3/10, USAC notified HCSD that they intended to deny the Funding Year 2009 471 Application 650947, FRNs 1786841 and 1786824 and 471 Application 662664, FRN 1809620 in which they referenced a January 6, 2009 meal that had been identified from their review of documentation submitted by Trillion (see Attachment 6). However, after conducting our own research, we were able to confirm and provide USAC with information that no such meal with HCSD personnel had occurred (see Attachment 7). USAC subsequently provided a revision to the 6/3/10 letter dated 6/18/10 (see Attachment 8) that identified the following meals; all except one had been identified previously:

1. *Pig Out BBQ 1 on January 6, 2009 in the amount of \$26.34 (previously identified in USAC's 6/3/10 letter) - This meal was not provided to HCSD personnel.*
2. *Trillion Demo on November 15, 2007 in the amount of \$20.66 each for David Sewell and Ken Fondren*
3. *Unknown date and location in 2008 at a value of Approximately \$25 (Bob Blalock and David Sewell) (previously identified by HCSD July 2009 response to USAC)*
4. *Unknown date and location in 2009 at a value of Approximately \$35 (Bob Blalock, David Sewell and Ken Fondren) (previously identified by HCSD July 2009 response to USAC)*

As previously noted, the January 6, 2009 meal was not provided to HCSD personnel and the 2008 and 2009 meals and visits were related to the contracted services site visits previously identified by HCSD to USAC. The November 15, 2007 meal identified by USAC from Trillion's documentation was a meal that was provided to all attendees as part of a Voice over Internet Protocol (VoIP) demonstration which was attended by a number of other districts and for which HCSD was only one of the several districts that attended. Again, the cost of this meal was well within the restrictions outlined by the Code of Alabama for the receipt of gifts/meals. The demonstration was for VoIP products where the HCSD was conducting market research on these and similar voice products. It is important to note that USAC has previously advised that product demonstrations are acceptable for applicants to collect product information and knowledge. This information was documented as recently as the 2010 Schools & Libraries Fall Applicant Training, Program Compliance presentation (see Attachment 9). Even though the district currently had a Request For Proposal (RFP) and 470 posted for WAN and Internet services, the

research being conducted on the VoIP products and services was not at all related to or included in the WAN and Internet services being sought at this time. In fact, this demonstration was part of research on VoIP products that had been ongoing for a number of years and did not result in the district bidding the VoIP services out until the following year. This was explained in our 7/5/10 response to USAC (see Attachment 10).

On 9/15/10 USAC issued a Funding Commitment Decision Letter denying 2009 funding for FRNs 1786824 and 1786841 (WAN and Internet Services) (see Attachment 1) and a funding approval for FRN 1809620 (VoIP Services). The following reason for the denials was given:

"This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open and therefore funding is denied."

Again, the focus of the denial is on the meals that were provided to HCSD personnel which were within the limitations set by the Code of Alabama. No other documentation or instances were questioned by USAC or cited in either their letters or their denial remarks to support the assertion that HCSD did not conduct a competitive bidding process that was fair and open.

Houston County Board of Education's attorney reviewed state competitive bidding practices and issued an opinion on whether a violation of the Alabama bid law occurred or whether the acceptance of meals violated the HCSD policy or Alabama law. He concluded that no violation occurred (see Attachment 11). Since this letter was provided after the FCDL was issued which denied these applications, USAC treated the attorney's letter as an appeal even though the letter was not sent to the appropriate section, did not contain the subject or words "Letter of Appeal" and did not mention "appeal." Because of this the district was issued an Administrator's Decision on Appeal – Funding Year 2009-2010 denying an appeal by HCSD for the 2009 applications that had not even been filed (Attachment 2). The following denial explanation was provided:

"USAC determined that the documentation provided during Initial review indicated that a fair and open competitive bidding process free from conflicts of interest was not conducted. When gifts, meals, gratuities and/or entertainment are accepted from the selected service provider prior to and throughout the applicant's contractual relationship with the selected service provider, it undermines the framework of the competitive bidding process. As is noted on USAC's website, <http://www.usac.org/sl/applicants/step03/run-open-faircompetition.aspx>, "the competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means there are no secrets in the process

- such as information shared with one bidder but not with others and that all bidders know what is required of them." "The applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition." Based on the documentation on record, USAC supports the decision to deny this funding request since the applicant failed to ensure an open and fair competitive bidding process. You have failed to provide evidence that USAC erred in its original decision that the applicant violated this program's competitive bidding rules. Consequently, the appeal is denied."

Again, the focus of the denial is was on the meals that were provided to HCSD personnel which were within the limitations set by the Code of Alabama. USAC cites only the meals received as the reason why HCSD failed to conduct a fair and open competitive bidding process. They imply through reference to the specific language in the guidance that information was shared or that an inappropriate relationship existed as a result of receiving the meals, however, in their review of our documentation, they did not identify or cite any documentation or instances showing that any information was shared or where a relationship other than that of customer and service provider existed.

Funding Year 2010 Denial Activity:

On 9/13/10 USAC notified HCSD that they intended to deny the Funding Year 2010 471 Application 722005, FRNs 1957944 and 1957954 in which they referenced the November 15, 2007 meal that had been provided as part of the VoIP demonstration (see Attachment 12) and was previously explained in our 7/5/10 response for the 2009 applications. Again, this meal was within the gift limitations outlined by the Code of Alabama and was part of a market research activity for VoIP products and services that were not at all related to the WAN and Internet Services that were subsequently denied. We provided this information to USAC with a more detailed explanation and statements made by the HCSD attendees in our 9/24/10 response (see Attachment 13).

On 10/6/10 USAC issued a Funding Commitment Decision Letter denying 2010 funding for FRNs 1957944 and 1957954 (WAN and Internet Services) (see Attachment 3) and a funding approval for FRN 1957964 (VoIP Services). The same denial reasons were given as those provided for the 2009 applications.

Additional Supporting Information

USAC consistently maintains in their denial decisions that the district was "offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open." However, the only things received by district personnel were meals that were well within the limits outlined by the Code of Alabama. USAC has presumed a conflict of interest based on meals received by district personnel that are permitted by the state and that were not explicitly excluded by FCC rules and guidance for the E-rate program available at the time of the purported infractions. In the absence of anything indicating HCSD engaged in any inappropriate behavior, it is not reasonable to believe that meals of no value provided as part of routine business meetings would influence anyone to violate competitive bidding rules thereby risking funding denials and possible prosecution. Additionally, it is worth noting that the contract was awarded by the Houston

County Board of Education and none of the Board members received any of the referenced meals.

According to local policy and the Code of Alabama 1975, Code of Ethics for Public Officials, Employees, etc, (see Attachments 4, 5 & 14), no Houston County Board of Education staff member shall solicit or accept a gift/thing of value when such a gift could be construed to be a result of or a precondition to business transactions between the parties. No violation of this mandate occurred. The meals were provided without precondition as part of business meetings related to current contracted services and part of the Voice over IP demonstration as a hospitality to *all attendees*, which included personnel from other organizations. Additionally, nothing of value was provided to HCSD personnel. According to the Code of Alabama's definition of a "thing of value", hospitalities such as meals of a reasonable value as well as inexpensive gifts of \$100 value and aggregate value of \$250 per calendar year are **not considered to be a "thing of value" under Alabama law**. Therefore, as stated previously, no HCSD employee violated state or local policy. This was confirmed by our Board attorney who reviewed the Alabama Code as well as board policy and interviewed all parties and determined that nothing occurred that would have tainted the competitive bidding process (see Attachment 11).

The Sixth Report and Order released by the FCC on September 28, 2010 makes the gift rules under the E-rate program consistent with the gift rules applicable to federal agencies which finally provides measurable restrictions of \$20 or less not to exceed \$50 per employee from any one source per calendar year, replacing the vague and ambiguous guidance previously available on this issue. However, it is not reasonable for this policy to be applied retroactively since applicants could not comply with guidance that was not available at the time the purported violations occurred. In fact, prior to the release of the Sixth Report and Order we were unable to locate any FCC rules, regulations, orders, etc., that were in place at the time the purported violations occurred. When USAC was asked for guidance on receiving meals/gifts from service providers, they directed us to the certifications in the Form 470 and 471 where the applicant certifies on both the Form 470 and 471 "...that the Billed Entity has not received anything of value or a promise of anything of value, other than services and equipment requested under this form, from the service provider(s) or any representative... in connection with this request for services..." (see Attachment 15). How does the FCC define a "thing of value"? Was there any published FCC regulation or USAC guidance available that provided a definition for a "thing of value"? Furthermore, the certification does not require the applicant to certify that they received "nothing"; therefore, it cannot be presumed that all things constitute a "thing of value." USAC also directed us to the guidance concerning free services and running a fair and open competitive bidding process located on their website which is both general and ambiguous (see Attachments 16, 17 and 18). Neither of these explicitly state any rules or guidance on the acceptance of meals, gifts, etc. In fact, they do not mention gifts or meals. The referenced guidance does not provide sufficient detail for anyone to *act upon* related to the receipt of meals or gifts. USAC also cited FCC 10-83, the Notice of Proposed Rulemaking, dated May 20, 2010, *a set of proposed rules*, when we requested they provide the FCC rules or USAC guidance they used to support the denial decisions so that we could properly appeal the decisions. The proposed rules they cited had not even been accepted and published as final at the time of our inquiry, let alone at the time the purported violations occurred, yet USAC felt they were relevant

to their decision to deny these applications. This is an unreasonable position.

In the absence of any FCC regulation with explicit guidance on accepting meals and gifts, we deferred to state law (Attachments 4 & 5) which does **not** consider meals of a reasonable value (less than \$100) to be a "thing of value". Therefore, when we certified on the Form 470 and 471s that we had not received anything of value or a promise of anything of value, we were honest in our certification. The fact that the district followed Alabama's state and local procurement laws in these instances is consistent with USAC/SLD's guidance for opening a competitive bidding process located on their website (see Attachment 19) which instructs applicants to *"Follow all applicable state and local procurement laws"* which is exactly what HCSD has done. In USAC/SLD's 2009 Fall Applicants Training they also directed applicants to *"Know and follow state and local rules regarding acceptance of gifts (limits, timeframes, etc)"* (see Attachment 20). Even though the guidance was very explicit concerning following state and local policies, the information provided was not explicit when it came to providing the FCC's rules concerning gifts.

Finally, Houston County School District conducted a fair and open competitive bid activity that was not violated by the acceptance of meals. HCSD personnel did **not** share any information at any time with Trillion or any other vendor that was not made available to all vendors. This is further supported by the fact that USAC's review of HCSD's and Trillion's documentation did not identify or cite any information or instances showing that any information was inappropriately shared or where a relationship other than that of customer and service provider existed.

Again, the focus of the denial is on the meals that were provided to HCSD personnel which were within the limitations set by the Code of Alabama and complied with the guidance available at that time. No other information or instances were questioned by USAC or cited in either their letters or their denial remarks to support the assertion that HCSD did not conduct a competitive bidding process that was fair and open.

Summary:

The information we've provided demonstrates that Houston County School District conducted a fair and open competitive bid process free of conflicts of interest because district personnel complied with the state's policy for accepting meals which was the prevailing policy available at that time. Furthermore, as defined by the Code of Alabama, the district employees received nothing of value that would constitute a violation of the competitive bidding process. Since the meals were the basis of the denials and Houston County School District did not engage in and USAC did **not** identify any inappropriate conversations, exchange of information, inappropriate relationships, or anything else from their *extensive review* that was used in their determination that a fair and open competitive bidding process did not occur, we request the FCC reverse USAC's denial decisions and fund HCSD's Funding Year 2009 and 2010 applications (FRNs 1786841, 1786824, 1957944, and 1957954).

Thank you for your consideration. We greatly appreciate the opportunity to participate in the E-rate program. If you have any questions please contact Bob Blalock at (334) 792-8331.

Sincerely,



Robert A. (Bob) Blalock
District Technology Coordinator
Voice: (334) 792-8331
Fax: (334) 792-1016
bblalock@hcboe.us

Attachments (20):

1. USAC Schools and Libraries Division, Funding Commitment Letter (Funding Year 2009: 07/01/2009 – 6/30/2010), Form 471 Application Number 650947, Dated 9/15/10
2. USAC Schools and Libraries Division, Administrator's Decision on Appeal – Funding Year 2009-2010, Form 471 Application Number 650947, Dated 10/28/10
3. USAC Schools and Libraries Division, Funding Commitment Letter (Funding Year 2010: 07/01/2010 – 6/30/2011), Form 471 Application Number 722005, Dated 10/6/10
4. Code of Alabama, Section 36-25-7, Offering, soliciting, or receiving things of value for purpose of influencing official action; money solicited or received in addition to that received in official capacity.
5. Code of Alabama, Section 36-25-1, Definitions
6. USAC Schools and Libraries Division Request Letter, Subject: Application Number(s): FY2009 Form 471# 650947, FRNs 1786841, 1786824, and 471# 662664, FRN 1809620, Dated 6/3/10
7. Houston County Schools Letter, Re: Information Regarding Meal Purchased by Trillion Partners, Inc. (with 1 Attachment), Dated 6/6/10
8. USAC Schools and Libraries Division Request Letter (Revised), Subject: Application Number(s): FY2009 Form 471# 650947, FRNs 1786841, 1786824, and 471# 662664, FRN 1809620, Dated 6/18/10
9. USAC Schools and Libraries Division, 2010 Fall Training Presentation Extract, Program Compliance (Slide 12)
10. Houston County Schools Letter, Re: Response to Denial Letter dated June 18, 2010 (with 4 Attachments), Dated 7/5/10
11. Hardwick, Hause, Segrest & Walding Letter, Re: Houston County Board of Education, Dothan, Alabama, Application Numbers FY2009 Form 471# 650947, FRNs 1786841, 1786824 and 471# 662664, FRN 1809620
12. USAC Schools and Libraries Division Request Letter (Revised), Subject: Application Number(s): FY2010 Form 471# 722005, FRNs 1957944 and 1957954, Dated 9/13/10
13. Houston County Schools Letter, Re: Response to Denial Letter dated 9/13/10, Subject: FY2010 Form 471# 722005, FRNs 1957944 and 1957954 (with 5 Attachments), Dated 9/24/10
14. Houston County Board of Education Policy, 6.14.1 – Gifts
15. USAC Schools and Libraries Division Email, Subject: Initial Contact, case# 22-078241, Dated

6/21/10

16. USAC Schools and Libraries Division Website, Step 6: Free Services Advisory Guidance
17. USAC Schools and Libraries Division Email, Subject: (FCC Reg guidance concerning meals, gifts, etc.) Initial Contact, case# 22-109410, Dated 9/17/10
18. USAC Schools and Libraries Division Website, Step 3: Run an Open and Fair Competitive Bidding Process
19. USAC Schools and Libraries Division Website, Step 3: Open a Competitive Bidding Process
20. USAC Schools and Libraries Division, 2009 Fall Training Presentation Extract, Issues in Competitive Bidding (Slides 17 & 18)